



David A. Crofts & Associates Inc.

LIFE • HEALTH • GROUP • INVESTMENTS

AUTO • HOME • BUSINESS

422 Montague Ave. Suite 7 • Greenwood, SC 29649-1961

Please return, by FAX or mail to:

David A. Crofts & Associates, Inc.

422 Montague Avenue, Suite #7

Greenwood, SC 29649

800-803-7873 -or- 864-223-8788

Fax: 864-229-7392

Please note that most areas which require signatures are pointed out with markers such as these:





**THIS AGREEMENT AND ALL ISSUES ARISING OUT OF OR MATTERS RELATED
TO SHALL BE GOVERNED BY AND EXPRESSLY SUBJECT TO THE SOUTH
CAROLINA UNIFORM ARBITRATION ACT.**

AGENT AGREEMENT

THIS AGREEMENT is made and entered into as of _____
("Effective Date") by and between PHYSICIANS EYECARE PLAN, INC., a South Carolina
limited liability company with its principal office located in Charleston, Charleston County,
South Carolina (hereinafter referred to as "PHYSICIANS EYECARE PLAN"), and , a South
Carolina licensed insurance agent or insurance company with its principal office located in
County, South Carolina (hereinafter referred to as "AGENT").

WITNESSETH:

WHEREAS, PHYSICIANS EYECARE PLAN represents an integrated network of
optometrists and ophthalmologists with excellent geographic coverage in South Carolina which
is capable of providing a defined scope of eye care services; and

WHEREAS, PHYSICIANS EYECARE PLAN wishes to increase its presence in
employer markets where a need exists for eye care services; and

WHEREAS, AGENT is an insurance agent/company licensed by the South Carolina
Department of Insurance that specializes in employer health benefits and has statewide and/or
regional employer relationships; and

WHEREAS, AGENT wishes to broaden and improve his/her insurance product for
clients interested in eye care services; and

WHEREAS, PHYSICIANS EYECARE PLAN and AGENT share the objective of
providing quality health care in an efficient, accountable and cost-effective manner; and

WHEREAS, AGENT wishes to include the services of PHYSICIANS EYECARE PLAN
in its product offerings, and PHYSICIANS EYECARE PLAN wishes to provide services in
accordance with this Agreement; and

WHEREAS, the aforementioned parties desire to set forth their understandings in a
written agreement,

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and undertakings of the parties hereto, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as of the Effective Date as follows:

I. DUTIES OF PHYSICIANS EYECARE PLAN:

PHYSICIANS EYECARE PLAN agrees that it will:

- (A) Supply to AGENT an accurate and up-to-date listing of the names, office addresses and office telephone numbers of all PHYSICIANS EYECARE PLAN participating providers.
- (B) Update the listing of PHYSICIANS EYECARE PLAN participating providers at least quarterly and as frequently as necessary to ensure that the PHYSICIANS EYECARE PLAN participating provider list is kept current and up-to-date.
- (C) Promote its managed eye care services to employer groups through AGENT on a non-exclusive basis.
- (D) Work with AGENT to develop eye care and vision benefit packages which meet the needs of AGENT's clients.

II. DUTIES OF AGENT:

AGENT agrees that he/she will:

- (A) Arrange for and promote the sale of PHYSICIANS EYECARE PLAN's vision and eye care services as the preferred vision and eye care plan to employer clients seeking to contract for eye care services.
- (B) Make reasonable and good faith attempts to sell PHYSICIANS EYECARE PLAN's vision and eye care products to all of AGENT's existing employer clients.

III. PAYMENT TO AGENT:

- (A) For the term of this Agreement, and solely for contracts secured through Agent's brokerage services, PHYSICIANS EYECARE PLAN will compensate AGENT quarterly an inclusive commission of 10% of all net receipts as paid by an employer contracting for routine vision services only (i.e., routine vision examination, with eyewear, when applicable).

- (B) In addition to the level and non-reducing commission set forth in 3A above, PEP further agrees to pay an additional commission percentage of two (2) percent of the premium collected when a single group case of 1000 or more members is enrolled; or prospectively subsequent to the collective enrollment of 2500 or more members by the Agent on an annual basis.
- (C) All of the following expenses which are incurred by AGENT, including but not limited to, salaries, employee compensation, travel, postage, printing, office supplies, billing, telephone, facsimile transmission, and any other expenses normally incurred in the daily operation of a business, are the sole financial responsibility of AGENT and will be paid solely by AGENT.

IV. INDEMNIFICATION:

- (A) PHYSICIANS EYECARE PLAN shall indemnify, hold harmless and defend AGENT, its officers, managers, directors, agents, employees, successors and assigns from and against any liability, loss, damage, claim, cause of action, cost or expense, including reasonable attorney's fees, arising out of or related to any acts or omissions of PHYSICIANS EYECARE PLAN and/or its shareholders, agents, managers, members, employees and/or contractors (other than AGENT), in connection with the performance of its services; and
- (B) AGENT shall indemnify, hold harmless and defend PHYSICIANS EYECARE PLAN, its officers, managers, directors, agents, employees, successors and assigns from and against any liability, loss, damage, claim, cause of action, cost or expense, including reasonable attorney's fees, arising out of or related to any acts or omissions of AGENT and/or its shareholders, agents, managers, members, employees and/or contractors (other than PHYSICIANS EYECARE PLAN), in connection with the performance of its services.

V. TERM AND TERMINATION:

- (A) **Term of Agreement.** This Agreement shall commence on the Effective Date and shall expire on the first (1st) anniversary thereof unless terminated earlier pursuant to the terms, of this Agreement. At the conclusion of each one-year term, this Agreement shall be automatically renewed from year to year until terminated pursuant to the terms of this Agreement.
- (B) **Termination by PHYSICIANS EYECARE PLAN.** Notwithstanding any other provision of this Agreement, PHYSICIANS EYECARE PLAN shall have the right to terminate this Agreement without cause, at any time, upon ninety (90) days' prior written notice to AGENT. In the event of a breach by AGENT, this Agreement may be terminated by PHYSICIANS EYECARE

PLAN following thirty (30) days' written notice from PHYSICIANS EYECARE PLAN identifying the breach, if AGENT has failed to remedy such breach within the thirty (30) day period. This Agreement also may be terminated by PHYSICIANS EYECARE PLAN immediately upon written notice to AGENT in the event of illegal or fraudulent conduct by AGENT or upon AGENT's insolvency or discontinuation of business.

- (C) **Termination by AGENT.** Notwithstanding any other provision of this Agreement, AGENT shall have the right to terminate this Agreement without cause, at any time, upon ninety (90) days' prior written notice to PHYSICIANS EYECARE PLAN. In the event of a breach by PHYSICIANS EYECARE PLAN, this Agreement may be terminated by AGENT following thirty (30) days' written notice from AGENT identifying the breach, if PHYSICIANS EYECARE PLAN has failed to remedy such breach within the thirty (30) day period. This Agreement also may be terminated by AGENT immediately upon written notice to PHYSICIANS EYECARE PLAN in the event of illegal or fraudulent conduct by PHYSICIANS EYECARE PLAN or upon PHYSICIANS EYECARE PLAN's insolvency or discontinuation of business.
- (D) **Termination Procedures.** In the event this Agreement is terminated, the parties will continue to perform services during the notice of termination period. The parties may negotiate for transitional services to be provided after the date of termination. All contracts, commissions and other programs developed during the term of this Agreement shall continue to the end of their respective terms.
- (E) **Prior Rights and Obligations.** Termination of this Agreement shall not affect any rights or obligations hereunder arising out of transactions occurring prior to the date of termination or which by their terms survive termination of this Agreement.

VI. GENERAL PROVISIONS

- (A) **Independent Contractors.** No provision of this Agreement is intended to create or shall be deemed or construed to create any relationship between PHYSICIANS EYECARE PLAN and AGENT other than that of independent entities contracting with each other solely for the purpose of effecting provisions of this Agreement. Neither PHYSICIANS EYECARE PLAN nor AGENT is or shall be considered an employer, employee, partner or joint venturer of the other.
- (B) **Assignment and Delegation.** This Agreement shall not be assignable by either party, by operation of law or otherwise, nor shall the rights and duties

specified hereunder be assigned or undertaken by any additional party, other than as specified, without the prior express written consent of the other party hereto.

- (C) **Complete Agreement.** This Agreement contains and constitutes the complete and exclusive statement of agreement between the parties hereto with respect to the subject matter hereof. This Agreement replaces, supersedes and cancels any prior agreements, representations, warranties, or communications, whether oral or written, between the parties relating to the transactions contemplated hereby or the subject matter herein. No representation, statement, condition or warranty not contained in this Agreement shall be binding on either party or have any force or effect whatsoever. This Agreement or any provision hereof may not be changed, waived, discharged or terminated except by agreement by both parties in writing.
- (D) **Medicare and Medicaid Beneficiaries/or Government as Payors.** This Agreement does NOT apply to health benefit programs that involve Medicare or Medicaid beneficiaries or any other program which the United States Government or one of its agencies or the state of South Carolina or one of its agencies, is a payor, direct or indirect.
- (E) **Notices.** All notices, demands, requests, consents or other communications required or permitted to be given or made under this Agreement shall be in writing and signed by the party giving the same and shall be deemed given or made when transmitted via facsimile, graphic scanning or other telegraphic communication, when delivered personally or by overnight courier, or three (3) days after being mailed by certified or registered mail, postage prepaid, to the intended recipient at the following address (or to such other address as either party shall notify the other):

PHYSICIANS EYECARE PLAN, Inc.

AGENT

48 Courtenay Drive _____

Charleston, SC 29403 _____

(Telephone) 843-577-5830

(Telephone) _____

Either party may, at any time, by giving five (5) days' prior written notice to the other party, designate any other address in substitution of the foregoing address to which such notice will be given.

- (F) **Binding on Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, and upon their respective successors, distributees, heirs, beneficiaries and permitted assigns.
- (G) **Waiver of Provisions.** Any waiver of any terms and conditions hereof must be in writing, and signed by the parties hereto. The waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms and conditions hereof, nor shall any waiver constitute a continuing waiver. Failure of either party to insist upon strict compliance with any conditions of the Agreement shall not be construed as a waiver of any such conditions, but they shall continue to remain in full force and effect.
- (H) **Governing Law.** The validity, interpretation, performance and enforcement of this Agreement as well as the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of South Carolina.
- (I) **Severability.** The provisions of this Agreement shall be deemed severable, and if any portion shall be held illegal, invalid, or unenforceable for any reason, the remainder of this Agreement shall be effective and binding upon the parties. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under the present or future laws effective during the term of this Agreement, such provision will be fully severable; this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically, as a part of this Agreement, a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.
- (J) **Nomenclature.** Common nouns and pronouns will be deemed to refer to the masculine, feminine, neuter, singular, and plural, as the identity of the person or persons, firm or corporation may, in the context, require.
- (K) **Counterparts.** This Agreement may be executed in several counterparts, each of which will be deemed an original but all of which will constitute one and the same instrument. However, in making proof hereof, it will be necessary to produce only one copy hereof signed by the party to be charged.
- (L) **Additional Documents and Acts.** Each party hereto agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to implement, effectuate,

carry out, and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby.

- (M) **Headings.** All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.
- (N) **Confidentiality.** During the term of the contractual agreement between PHYSICIANS EYECARE PLAN and AGENT (hereinafter referred to as “Agreement”), and for a period of one (1) year following the termination of this Agreement, it is agreed that, regardless of the reason for termination, in consideration of the confidential nature of the information that will be shared by PHYSICIANS EYECARE PLAN and AGENT, neither party will disclose to any other person, firm, corporation or entity, any information contained in this Agreement nor that contained in any and all vendor agreements affiliated with this Agreement without the express written consent of both parties of this Agreement. Except for disclosure to its bankers, attorneys, underwriters or lenders, neither party hereto shall disseminate or release to any third party any information regarding any provision of this Agreement, or any information regarding the other party (past, present or future) that was obtained in the course of the negotiations of this Agreement or in the course of the performance of this Agreement, without the other party’s written approval; provided, however, the foregoing shall not apply to information which (i) is generally available to the public other than as a result of a breach of confidentiality provisions; (ii) becomes available on a non-confidential basis from a source other than the other party or its affiliates or agents, which source was not itself bound by a confidentiality agreement, or (iii) which is required to be disclosed by law or pursuant to court order. AGENT shall treat all information related to PHYSICIANS EYECARE PLAN benefit plans and pricing as strictly confidential and will not use such information to his/her benefit nor disclose such information to any other person except as required to fulfill the duties required by this Agreement or as required by law. Furthermore, the parties recognize that due to the nature of the relationship established by this Agreement, AGENT will have access to information of a proprietary nature which is owned by PHYSICIANS EYECARE PLAN, including but not limited to, vision benefit plan designs, fees, reimbursement schedules, computer programs, and marketing materials. AGENT recognizes that PHYSICIANS EYECARE PLAN retains exclusive ownership of its proprietary information, and that such information constitutes confidential and trade secret property. AGENT hereby expressly and knowingly waives any and all right, title and interest in proprietary information belonging to PHYSICIANS EYECARE PLAN and agrees to return all copies of such proprietary information upon expiration or earlier termination of this

agreement. The obligation to maintain the confidentiality of proprietary information shall survive the termination of this Agreement.

- (O) **Contract Modifications for Prospective Legal Events.** In the event of any legislative, judicial or regulatory change or determination, whether federal or state, which has or would have a significant adverse impact on either party hereto in connection with the performance of this Agreement, or in the event that performance by either party of any term, covenant, condition or provision of this Agreement should for any reason be in violation of any statute, regulation, or otherwise be deemed illegal, the affected party shall have the right to require that the other party renegotiate the terms of this Agreement, such renegotiated terms to become effective not later than thirty (30) days after receipt of written notice of such request for renegotiation. If the parties fail to reach an agreement satisfactory to both parties within thirty (30) days of the request for renegotiation, the party requesting such renegotiation may terminate this Agreement upon thirty (30) days prior written notice to the other party or sooner if required by law. Neither party hereto will make payments under this Agreement which would be prohibited under state or federal law.
- (P) **Remedies Cumulative.** No remedy set forth in this Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to any party, but the same shall be distinct, separate and cumulative.
- (Q) **No Third Party Beneficiary.** This Agreement is made solely and specifically between and for the benefit of the parties hereto, and their respective successors and assigns, subject to the express provisions hereof relating to successors and assigns, and no other person will have any rights, interest, or claims hereunder, or be entitled to any benefits under or on account of this Agreement, as a third party beneficiary or otherwise.
- (R) **No Obligation to Third Parties.** None of the obligations and duties of PHYSICIANS EYECARE PLAN or AGENT under this Agreement shall in any way or in any manner be deemed to create any obligation of PHYSICIANS EYECARE PLAN or of AGENT to, or any rights in, any person or entity not a party to this Agreement. PHYSICIANS EYECARE PLAN acknowledges that all employees of PHYSICIANS EYECARE PLAN who provide services to AGENT are employed by PHYSICIANS EYECARE PLAN, that PHYSICIANS EYECARE PLAN determines and pays their salaries and has the sole authority to hire, assign, promote, demote and terminate such employees. Similarly, AGENT acknowledges that all employees of AGENT who provide services to PHYSICIANS EYECARE PLAN are employed by AGENT, that AGENT determines and pays their

salaries and has the sole authority to hire, assign, promote, demote and terminate such employees.

- (S) **Access to Records.** Each party shall permit the other to inspect and copy, upon reasonable advance notice and during normal business hours, relevant accounting and administrative books and records of the party as they pertain to their respective obligations under this Agreement.
- (T) **Attorneys' Fees.** Should any party retain counsel to enforce any of the provisions herein or protect its interest in any matter arising under this Agreement, or to recover damages by reason of any alleged breach of any provision of this Agreement, each party in any such action shall pay its own attorney's fees and costs incurred in connection therewith.
- (U) **Mediation; Arbitration.** Any dispute relating to this Agreement will first be submitted to non-binding mediation in accordance with the rules established by the American Arbitration Association. If mediation does not result in the resolution of such dispute within thirty (30) days, the matter shall be governed by the South Carolina Uniform Arbitration act and submitted to binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules including a three (3) person panel. Judgment on any decision rendered by the arbitrator(s) shall be binding and final on the parties hereto.

IN WITNESS WHEREOF, this Agreement is entered into and executed as of the date first written above to be effective as described herein.

PHYSICIANS EYECARE PLAN, INC.

By: _____  Date: _____

Print name of Agent and License Company

Company License #

By: _____
Company Representative

Date: _____

Tax ID # _____

*Please include list of agents selling this program.